IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2003

CORAM

THE HONOURABLE MR JUSTICE P.D. DINAKARAN

WRIT PETITION NO.18921 OF 2003
AND
W.P.M.P.NO.23682 of 2003

1. P. Kandasamy
2. P. Chenniappan
3. P. Sivakumar
4. Subburaya Gounder
5. Chellamuthu
6. Manoharan ... Petitioners

-Vs-

1. The Secretary to Government
Government of Tamil Nadu
Home (Courts II A) Department
Fort St. George
Chennai - 5.

2. The Inspector General of Police
Economic Offence Wing-II
Chennai.

3. The Competent Authority and
Additional Commissioner of
Land Administration
Chennai.

4. The District Registrar
Erode. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari as stated therein.

For Petitioner : Mr. K. Sukumaran

For Respondents : Mr. M.S. Palanisamy, AGP.

:O R D E R

The petitioners have filed the writ petition praying for the issue of

a writ of Certiorari calling for the records relating to the proceedings in G.O.Ms.No: 400 dated 13.5.2003 of the Secretary to Government of Tamil Nadu, Home (Courts II-A) Department, Secretariat, Chennai and quash the same in so far as the properties belonging to them.

2. It is the case of the petitioners that the they have purchased the properties in their name and they do not stand in the name of the financial establishment viz., M/s.Kannagi Finance Corporation or its subsidiaries, or its members. There is material to show that the properties were purchased out of the deposits collected from the depositors and that they are not even partners or members of the Financial Establishment, nor they are connected in any manner with the affairs of the financial establishment.

3. However, the second respondent initiated penal proceedings against the said financial institution under the provisions of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, (hereinafter referred to as the 'Act'), pursuant to which the first respondent issued G.O.Ms.No.400, dated 13.5.2003 for interim attachment of the properties of the petitioners invoking Section 3 of the Act. Hence, the above writ petition.

4.1. The Act is intended to protect the deposits made by the public in the financial establishments and the matters thereto.

4.2. The scheme of the Act provides for confirmation of the order of attachment by the Special Court constituted under Section 6 of the Act.

4.3. Section 7(1) of the Act provides a notice to be served on the financial establishment or to any other person whose property is attached under Section 3 of the Act to show cause why the order of attachment should not be made absolute.

4.4. Section 7(3) of the Act provides that any person claiming interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under Section 7(1) of the Act, make an objection before the order is passed for making an order of attachment absolute under Section 7(4) of the Act.

4.5. Section 7(6) of the Act enables the Special Court, after investigation under sub-Section (5) to Section 7 of the Act, either to make interim order of attachment absolute or varying it by releasing a portion of the property from the attachment or cancelling the ad interim order of attachment, provided that the Special Court shall not release from attachment any interest which it is satisfied that the financial establishment or the person referred to in Sub section (1).

4.6. Any person aggrieved by an order of the Special Court may appeal to the High Court within thirty days from the date of the order, under Section 11 of the Act.

4.7. The scheme of the Act provides built in provisions for any

interested person whose property is complained to have been attached to seek appropriate relief either before the Special Court or thereafter to prove his case during the investigation under Section 7(5) of the Act and thereafter, even to prefer an appeal as provided under Section 11 of the Act.

5. The grievance of the petitioners is that under the guise of criminal prosecution initiated against the said financial institutions, viz. M/s.Kannagi Finance Corporation, Kannagi Investment Corporation, Kannagi Financiers, Kannagi Investment, Kannagi Motor Finance, Kannagi Motor Finance Corporation, for the alleged contravention of the provisions of the Act read with Sections 409 and 420, IPC, the first respondent has issued the G.O, impugned for attaching the properties of the petitioners which is arbitrary and illegal.

6. But, I do not see any arbitrary or illegal exercise of powers by the respondents in attaching the properties of the said Financial Institutions while issuing G.O. No.400 dated 13.5.2003 and proceeding therewith as per the provisions of the Act, inasmuch as the properties attached are owned by the said financial institutions.

7. However, if the properties attached under the said G.O. is owned by the petitioners, they are at liberty to approach the Special Court under Section 7(3) of the Act and to seek either to vary or to cancel the interim order of attachment. If they are still aggrieved by any order of the Special Court, an appeal would lie under Section 11 of the Act. Therefore, it may not be proper for this Court to entertain this writ petition and to grant the relief as prayed for. Hence, the writ petition is dismissed. No costs. Consequently, WPMP No.21275 of 2003 is also dismissed.

Index : Yes
Internet: Yes

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To

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